

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AA MEDICAL P.C.,

Plaintiff,

v.

KHALED ALMANSOORI, M.D.,

Defendant.

Docket No.
20-cv-03852 (DG)(JMW)

**DEFENDANT KHALED ALMANSOORI'S MEMORANDUM IN
SUPPORT OF MOTION TO STAY DISCOVERY PENDING
DETERMINATION OF MOTION TO DISMISS**

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Of Counsel:

Adam I. Kleinberg

Due to the significant issues regarding the sufficiency of Plaintiff's claims, Defendant Khaled Almansoori, M.D. ("Dr. Almansoori") hereby moves the Court for an order staying discovery pending the Court's determination of Dr. Almansoori's motion to dismiss Plaintiff AA Medical, P.C.'s ("AA Medical") Amended Complaint.

PROCEDURAL STATUS

AA Medical filed this lawsuit on August 21, 2020. Dr. Almansoori first indicated his intent to seek dismissal of AA Medical's claims by filing a pre-motion letter seeking to have a conference prior to Dr. Almansoori's filing of a motion to dismiss AA Medical's claims. (Doc. #12). AA Medical also filed two other lawsuits that were removed to the Eastern District of New York in September 2020. (See Eastern District of New York Case Nos. 2:20-cv-04413, 2:20-cv-04350). Dr. Almansoori also filed pre-motion letters in those two actions seeking to have conferences prior to filing motions to dismiss AA Medical's claims in each matter.

The Court sought the parties' positions on consolidation of the instant action with the other two Eastern District of New York lawsuits. (See March 29, 2021 Order). Dr. Almansoori indicated a willingness for the consolidation of the three lawsuits. (Doc. #18). AA Medical opposed consolidation. In opposing consolidation of the matters, AA Medical also sought the Court's permission to file an amended complaint to address the deficiencies for which Dr. Almansoori had indicated an intent to seek dismissal of AA Medical's claims in his three pre-motion letters. (Doc. #19). On May 11, 2021, the claims in the other two Eastern District of New York lawsuits were consolidated with the instant action. (Doc. #21). The Court also granted AA Medical permission to file a consolidated amended complaint for the claims in each of the three lawsuits. (*Id.*).

On June 14, 2021, AA Medical filed its consolidated Amended Complaint. (Doc. #24). On July 12, 2021, Dr. Almansoori filed a motion to dismiss the Amended Complaint. (Docs. #26-

28). Dr. Almansoori then filed a pre-motion letter on July 14, 2021 in order to request a pre-motion conference in accordance with the Court's instructions. (Doc. #29). On August 3, 2021, the Court directed Dr. Almansoori to re-serve his motion to dismiss on AA Medical. Due to the motion to dismiss pending before the Court, and the substantial issues regarding this matter that the motion presents, Dr. Almansoori seeks to stay discovery in this matter until the Court's determination of the sufficiency of AA Medical's claims.

ARGUMENT

Courts have discretion to stay discovery while a dispositive motion, such as a motion to dismiss, is pending. *See Transunion Corp. v. PepsiCo, Inc.*, 811 F.2d 127, 130 (2d Cir. 1987) (district court's stay of discovery pending motion to dismiss not abuse of discretion). Such stays may be granted where good cause is shown. *See Thomas v. New York City Dep't of Educ.*, 09-CV-5167 (SLT), 2010 U.S. Dist. LEXIS 95798, 2010 WL 3709923, at *3 (E.D.N.Y. Sept. 14, 2010), adopted, 2011 U.S. Dist. LEXIS 32801, 2011 WL 1225972 at *21 (E.D.N.Y. Mar. 29, 2011). In considering whether good cause has been demonstrated, courts look to the following factors: "(1) whether the defendant has made a strong showing that the plaintiff's claim is unmeritorious; (2) the breadth of discovery and the burden of responding to it; and (3) the risk of unfair prejudice to the party opposing the stay." *Id.* (citation omitted). A stay of discovery pending resolution of a potentially dispositive motion is appropriate where the motion appears to have substantial grounds or, stated another way, does not appear to be without foundation in law. *Computer Assocs. Int'l, Inc. v. Simple.com, Inc.*, 247 F.R.D. 63, 69 (E.D.N.Y. 2007).

Dr. Almansoori has presented meritorious arguments justifying dismissal of AA Medical's Amended Complaint pursuant to Rule 12(b)(6), and there is a strong likelihood of dismissal of each of AA Medical's claims. Dr. Almansoori has set forth in detail the multiple reasons for which each claim in AA Medical's Amended Complaint fails to state a claim upon which relief can be

granted. Dr. Almansoori incorporates by reference each of the arguments set forth in his motion to dismiss and his pre-motion letter (*See* Docs. # 26-29), as well as those to be set forth in Dr. Almansoori's forthcoming re-served motion to dismiss. Due to the substantial basis in law of Dr. Almansoori's arguments justifying dismissal of AA Medical's Amended Complaint, a stay on discovery pending the Court's determination of the motion is warranted.

The potential breadth of discovery and burden of responding to discovery also supports a stay on discovery pending the Court's determination of Dr. Almansoori's motion to dismiss. Due to Plaintiff's procedural machinations, this case is still at a preliminary stage, and any discovery would potentially be highly burdensome and involve a great deal of information. A stay on discovery until the Court determines the scope of any surviving claims in this matter will best promote efficiency and judicial economy in this matter. Due to the potential burden of engaging in discovery prior to the dismissal of the Amended Complaint or narrowing of the claims in this matter, a stay on discovery is warranted.

A stay on discovery would not result in unfair prejudice to AA Medical. This case is still at a preliminary stage largely due to AA Medical's decision to initially file the actions consolidated into this matter as three separate lawsuits. Further, AA Medical sought the Court's permission to file the Amended Complaint that is the subject of Dr. Almansoori's motion to dismiss. Due to the lack of unfair prejudice to AA Medical, a stay on discovery is warranted.


CONCLUSION

For the foregoing reasons, Dr. Almansoori respectfully requests that the Court grant a stay on discovery pending the Court's determination of Dr. Almansoori's motion to dismiss the Amended Complaint.

Dated: Carle Place, New York
August 17, 2021

Respectfully submitted,

SOKOLOFF STERN LLP

By: _____

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